

1 between the two, telling us that we were out of compliance.

2 Q And so?

3 A And so when we did this renewal we checked "No"
4 reflecting what our understanding was that we were out of
5 compliance at that point.

6 Q Did you believe you were out of compliance in 1995
7 when you checked "Yes"?

8 A No.

9 Q So is it fair to say that you answered this in
10 direct response to a letter you received from the Commission
11 telling you you weren't in compliance?

12 A Yes.

13 Q Now, Mr. Becker, do you recall on questioning by
14 counsel for the Commission that you were asked, in
15 connection with a number of your translators, whether you
16 had never submitted a written waiver request of the present
17 addition of Section 74.1232 of the Commission's rules?

18 A Yes, I remember.

19 Q And do you recall what your answers were in
20 connection with those inquiries?

21 A Refresh my memory. 74.1232 is ownership
22 restriction?

23 Q Correct.

24 A And rephrase your question again.

25 A Do you recall your responses to his inquiries on

1 whether you had filed additional waiver requests to the
2 present addition of that section of the rules subsequent to
3 the 1991 report and order?

4 A Okay. I believe my answer was no, that we didn't
5 request a waiver of the ownership restrictions.

6 Q And was there a reason you didn't do that?

7 A We believed that we were excluded under the Alaska
8 exception in footnote 59.

9 Q Following the release of the 1990 report and order
10 and up until the 1996 Linda Blair letter, did you ever
11 receive any correspondence from the Commission indicating to
12 you that your translators were operating out of conformity
13 with the translator rules?

14 A No.

15 Q Did you receive any letters telling you to come
16 into compliance?

17 A No.

18 Q Between that period had your stations been subject
19 to field inspections by the FCC's Enforcement Bureau?

20 A Yes.

21 Q Did any enforcement officer who reviewed your
22 station operation ever tell you that your translators were
23 operating out of conformity with the Commission's translator
24 rules?

25 A No.

1 Q Did they specifically inspect your translators?

2 A No.

3 Q Did they inspect your parent station?

4 A Yes.

5 Q Did they inspect your station in Soldotna, Alaska?

6 A Yes.

7 Q Did they find you out of compliance with the
8 Commission's main studio rule in your operation of our
9 Soldotna FM station?

10 A No.

11 Q Prior to the order that's the subject of this
12 proceeding, did you ever receive a **show** cause order from the
13 Commission asking you to show cause why your Wrangell
14 waivers should be revoked?

15 A I'm thinking of the timing here.

16 The May 2001 order contained a show cause order
17 regarding the two Seward stations, as to why those waivers
18 should not be revoked.

19 Q And was that the same order that is the order
20 which we are participating in this hearing today?

21 A No, this is a show cause order to revoke my
22 licenses.

23 Q Did both orders come out in 2001?

24 A Well, the one came out in May for the Seward
25 stations. This order came out in February of 2002.

1 Q Thank you.

2 Do you recall being questioned by counsel for the
3 Bureau regarding your Seward, Alaska FM translators?

4 A Yes.

5 Q The licenses under which they are currently
6 operating were granted when?

7 A Frankly, I'm confused because I have had two
8 grants.

9 Q Well, do you have a current license for each of
10 the translators?

11 A I do.

12 Q And when were those current license granted?

13 A Well --

14 Q I'm not talking about license renewal grants. I'm
15 talking about --

16 A Oh, the license --

17 Q -- the licenses issued --

18 A I'm sorry.

19 Q -- to operate.

20 A I misunderstood.

21 Those licenses were granted January of 1999.

22 Q Okay. Granted by the FCC?

23 A Oh, yes. Yes.

24 Q And these are the licenses pursuant to which you
25 are presently operating the translators?

1 A Yes.

2 Q Now, in January of 1999, how many commercial
3 broadcast stations were licensed and operating in Seward,
4 Alaska?

5 A Two.

6 Q And what were they?

7 A KSWD-AM and KPFM-FM.

8 Q Both licensed in Seward, Alaska?

9 A Yes.

10 Q So then based on your understanding of the
11 commission's translator rules, were your Seward translators
12 fill-in translators when they were approved, when these
13 licenses were granted?

14 A No, they were not fill-ins, but I need to clarify
15 the previous question.

16 Q Go ahead.

17 A It was my understanding at the time that they
18 granted my 1999 licenses, that KPFM was operating under a
19 program test authority, and didn't get its actual license
20 until some time later, but it was on the air.

21 Q In operation?

22 A In operation, yes.

23 Q Okay. Therefore, based on your understanding of
24 the Fm translator rules, were your Seward translators fill-
25 in translators?

1 A No.

2 Q They were not serving white FM area, that in fact
3 there was an FM station operating in Seward?

4 A Yes.

5 Q And the Commission granted your licenses at that
6 time on that basis?

7 A Yes.

8 Q Is this unusual? Do you know of any situation
9 where the Commission has granted non-fill-in translators
10 with Wrangell waivers in Alaska since the release of the
11 report and order in 1990?

12 A Yes.

13 Q How many instances are you aware of?

14 A A lot. Can't tell you the exact number without
15 looking at the file, but there is a number of them that have
16 been granted.

17 Q That are operating today?

18 A Yes.

19 Q In your mind, Mr. Becker, is there a reason that
20 the Commission would allow non-fill-in Wrangell waiver
21 translators to operate in some places in Alaska, but not
22 allow you to hold licenses for non-fill-in FM translators
23 operating through Wrangell waivers in Alaska?

24 MR. SHOOK: Your Honor, I'm going to object. With
25 respect to the previous question that leads into the current

1 question, to which I am objecting, there is an assumption
2 that evidence is in the record, which in fact it **is** not, and
3 that concerns me, these other translators that are being
4 referenced at this point.

5 There is nothing in the record to reflect what
6 these translators are, where they are, and why it is that
7 they are supposedly not in compliance with the rules at this
8 point. If this is something that, you know, Mr. Southmayd
9 wants to introduce in his exhibit, that's one thing. But I
10 don't see how this information can possibly come in through
11 Mr. Becker, since it refers to other license files of
12 engineering matters to which there simply nothing in the
13 record right now.

14 JUDGE SIPPEL: Mr. Southrnayd?

15 MR. SOUTHMAYD: Well, Your Honor, there has been a
16 great deal of discussion, questions asked of my client
17 regarding non-fill-in translators and his alleged illegal
18 operation or unauthorized operation of these translators. I
19 think it's very relevant that within the same state others
20 are allowed to do that which the Commission has indicated he
21 is doing in an unauthorized and illegal manner. I think
22 it's very relevant, particularly going **to** his state of mind.

23 JUDGE SIPPEL: It may be relevant as **a** form of
24 affirmative defense, **I** think it's the form in which it's
25 coming in. It's just coming in as hearsay. We have no way

1 of knowing. We have no way of testing what you are saying.

2 THE WITNESS: May I ask a question?

3 JUDGE SIPPEL: Why don't you consult with your
4 counsel?

5 (Witness and counsel confer.)

6 MR. SOUTHMAYD: Your Honor.

7 JUDGE SIPPEL: Yes.

8 MR. SOUTHMAYD: I would refer the Court to EB
9 Exhibit 14, which is entered into evidence in this
10 proceeding by the Commission.

11 JUDGE SIPPEL: This is entitled "Summary of
12 Petition **for** Reconsideration"?

13 MR. SOUTHMAYD: Correct.

14 In our petition for reconsideration, we list --
15 well, I have to take quick look. I believe we list
16 translators in Alaska that don't comply -- that are non-
17 fill-in, non-white area translators.

18 JUDGE SIPPEL: What page are you on right now?

19 MR. SOUTHMAYD: Let me look. Starting at page 5,
20 continuing to page 6, to page 7.

21 MS. LANCASTER: Are you giving the exhibit page
22 number or are you asking -- what are you referring to?

23 MR. SOUTHMAYD: The exhibit page number would
24 begin on page 6 and continue to page 8. We specifically --
25 this is the Commission's exhibit. It specifically lists

1 translators that are non-compliant.

2 JUDGE SIPPEL: This is your pleading

3 MR. SOUTHMAYD: Yes.

4 JUDGE SIPPEL: Yes, it was taken and put in the
5 record as a Bureau exhibit.

6 MR. SOUTHMAYD: Correct.

7 JUDGE SIPPEL: And you're saying -- well, I can
8 read that. It starts with paragraph four --

9 MR. SOUTHMAYD: Correct.

10 JUDGE SIPPEL: -- of the pleading and goes over to
11 paragraph 10. I guess it stops at paragraph nine?

12 MR. SOUTHMAYD: Correct.

13 THE WITNESS: Well, it includes paragraph 10.

14 MR. SOUTHMAYD: Right. **And** I guess I could ask my
15 client if he were familiar with this and if it's accurate.

16 JUDGE SIPPEL: Well, it's a pleading. It was
17 submitted as a pleading. There is an obligation to file
18 pleadings which are truthful with the Commission.

19 MR. SOUTHMAYD: Correct.

20 JUDGE SIPPEL: So it's factually concerned, and it
21 was put in the record by the Bureau. So, yes, I would
22 permit you to direct your client's attention **to** that
23 information.

24 MR. SOUTHMAYD: Thank you, Your Honor.

25 BY MR. SOUTHMAYD:

1 Q Mr. Becker, if you could refer to EB Exhibit 14.

2 A I have it.

3 Q And review pages 6 through 9, paragraph 10.

4 A I have that.

5 Q Are you familiar with the non-compliant FM
6 translators that are discussed through those pages?

7 A I am.

8 Q Are they in operation at the present time, to the
9 best of your knowledge?

10 A To the best of my knowledge, they are all in
11 operation.

12 Q And operating pursuant to the description in those
13 pages?

14 A Yes.

15 Q Can you tell me how, if at all, your operation of
16 the translators, the seven translators that you describe as
17 the Wrangell waiver translators, differ from the manner in
18 which these translators are allowed to operate at the
19 current time?

20 A Well, you want me to go on a case-by-case basis --

21 Q That would probably be useful.

22 A -- or some general statement?

23 JUDGE SIPPEL: Now before *you* start on these, I
24 want to be sure I understand it. Each of these stations
25 that you are referring to in the pleading were granted

1 waivers by the Commission? So they were operating under the
2 auspices of the Commission waivers; is that right?

3 THE WITNESS: Yes, that is what **is** said in
4 paragraph four.

5 JUDGE SIPPEL: All right.

6 THE WITNESS: The second sentence.

7 JUDGE SIPPEL: Well, this is your testimony.

8 THE WITNESS: Yes, this is true.

9 JUDGE SIPPEL: Go ahead.

10 THE WITNESS: Well, this -- the first example is,
11 let's see, maybe I should ask for the question again because
12 am I going to describe how my translators are any different?

13 MR. SOUTHMAYD: I'll restate it. I'll --

14 JUDGE SIPPEL: Let counsel --

15 MR. SOUTHMAYD: I'll restate it.

16 JUDGE SIPPEL: -- ask the question.

17 BY MR. SOUTHMAYD:

18 Q On page 6, paragraph 4, there is reference to
19 K235AC, Sitka, Alaska in the middle of the page.

20 A Yes.

21 Q Do you see that?

22 A Yes.

23 Q How is that operation any different from your
24 operation of your translator in Kenai/Soldotna?

25 A This one is different because it has an alternate

1 signal delivery for this translator via phone line. My
2 translator in Kenai/Soldotna receives a signal off-air. Our
3 translators in Seward would be more closely representative
4 **of** this kind of a translator where we have an alternate
5 signal delivery.

6 Q Are you saying, Mr. Becker, that this translator
7 requires a greater number of Wrangell waivers than your
8 translator in Kenai/Soldotna?

9 A Yes.

10 Q So this is a more pronounced case of a Wrangell
11 waiver than your case?

12 A Yes, except for Seward. We have the same kind of
13 waiver for Seward as this station does in Sitka.

14 Q I understand.

15 In your mind, Mr. Becker, is there a reason that
16 the Commission licenses and authorizes this translator to
17 operate but does not -- but is unwilling to license and
18 authorize your Kenai/Soldotna translators to operate?

19 A I don't know of any reason. That's no.

20 Q If you could turn to page 7 of the exhibit,
21 paragraph 6, it describes FM translator K296DI in Barrow,
22 Alaska; is that correct?

23 A Yes.

24 Q To the best of your knowledge, does this
25 translator operate pursuant to a Wrangell radio waiver?

1 A Yes.

2 Q Can you tell us how it differs from the operation
3 of your Kenai/Soldotna translator?

4 A The -- this Barrow translator is somewhere, my
5 guess is, at least 800 miles north of North Pole, Alaska,
6 which is the parent station KJNP, North Pole, Alaska. There
7 would be no way to receive the **AM** station out there because
8 of the distance involved, and so therefore they have a
9 Wrangell waiver, they actually have two Wrangell waivers
10 here; one for alternative signal delivery to feed the
11 translator via I believe it's a phone line, although I don't
12 see it here, but my knowledge is that is via a phone line;
13 and also they got a Wrangell waiver for a cross-band
14 ownership of that translator since **AM** stations are normally
15 not permitted to own an FM translator.

16 Q So this is an FM translator rebroadcasting an **AM**
17 station?

18 A That is correct.

19 Q And you estimate it's how far from the parent
20 station?

21 A My guess would be about 800 miles.

22 Q In your mind, Mr. Becker, is there some reason
23 that -- justification you can find pursuant to which the
24 Commission authorizes this Wrangell radio FM translator
25 operation but will not authorize your operation of your

1 Kenai/Soldotna translator?

2 A I know *of* no justification for what the Commission
3 is trying to do.

4 Q In paragraph five, there is a mention of a
5 translator K201BI, Cordova, Alaska; *is* that correct?

6 A Yes.

7 Q Does that operate pursuant to a Wrangell radio
8 waiver?

9 A Yes.

10 Q And how does that operate differently than your
11 Kenai/Soldotna FM translator?

12 A Well, there was an existing unlimited time **AM**
13 station in Cordova when that translator was granted, so it
14 was not a white area. And so they waived the white area
15 restriction in granting the Wrangell waiver for this station
16 to operate within the contour of this other station that's
17 already serving Cordova, Alaska.

18 Q Is this the same white area restriction that the
19 Commission has found fault with you in operating your **FM**
20 translators?

21 A Yes.

22 could I elaborate on that?

23 Q **Yes.**

24 A None of my stations from the outset, from my very
25 first translator, were ever white area translators.

1 Q They have never been?

2 A They have never been.

3 Q So in order to get them authorized, what does that
4 mean?

5 A Well, at the outset, in cases where the translator
6 did not fall within the primary signal contour of another
7 commercial FM station, there was no necessity to seek a
8 waiver. However, where it fell within the contour of
9 another existing commercial FM station, **we** asked for
10 Wrangell waivers. And as long as the other station did not
11 object, the Commission granted our permits.

12 Q Now by the Commission, Mr. Becker, on what level
13 were these permits and licenses generally granted, to the
14 extent you know?

15 A By the staff.

16 Q And were -- with the exception of the -- strike
17 that.

18 How many of these licenses were granted during the
19 period Mr. Eads, who you mentioned earlier in your
20 testimony, was in charge of that section of the Commission?

21 MR. SHOOK: Objection. We have to have some dates
22 beforehand to tie in when these various events are taking
23 **place**. Right now the record is very muddled as to when Mr.
24 Eads was around, what, if anything, he had to do with
25 this, when the various -- what grants are we talking about

1 here. And with some clarification, I think this would go
2 forward.

3 JUDGE SIPPEL: Yes, sustained.

4 BY MR. SOUTHMAYD:

5 Q Let me go about it another way.

6 Mr. Becker, do you recall being examined on your
7 testimony by counsel for the FCC about your assertion that
8 changes in the staff at the Commission had resulted in a
9 change in policy by the staff?

10 A Yes.

11 Q And do you recall disclosing members of the staff
12 who had left who you thought were components to this change
13 in policy?

14 A Yes

15 Q Who are they?

16 A I mentioned Mr. Eads who I believe was the
17 supervisor of Allen Snyder, and also Tom English, and I
18 believe I testified that my understanding he left in 1996
19 He left the FCC in 1996.

20 JUDGE SIPPEL: Who is the "he"?

21 THE WITNESS: Mr. Eads, E-A-D-S.

22 BY MR. SOUTHMAYD:

23 Q **So** therefore is it your understanding that
24 applications granted to prior to 1996 were under his
25 supervision?

1 A Yes.

2 Q Now did you ever speak to Mr. Eads?

3 A No.

4 Q Did you ever speak to Mr. Thomas English?

5 A Yes.

6 Q Generally, under what circumstances?

7 A I recall Mr. English calling me on two or three
8 different occasions where I had an application pending, and
9 he was attempting to fix a problem with the application. In
10 one case, we did not have the tower registration number, and
11 there was some deficiency in the application, and he wanted
12 to clear it up so he could grant it.

13 And I recall him calling, I believe it was with
14 regard to the translator that we filed for on 105.9, which
15 was trying to fix a signal fading problem we had in Kodiak,
16 trying to clarify the requested tower that we had asked for,
17 and wanting to know if we could live with reduced power
18 other than what we had asked for. And I said, well, it
19 wouldn't work as well, but yeah, if it meant we could get it
20 granted, then I would be more than willing to live with
21 reduced power

22 Q Did you submit a written amendment to that
23 application memorializing that proposed change?

24 A No, because when they granted it, they issued a
25 Wrangell radio waiver type letter in which they said you

1 asked for this amount of power. We think it's too much.
2 Therefore, we are going to set that power level at the same
3 power level as your other translators, which is co-located
4 at the same site, and they granted it for less than what I
5 asked for, but however in the bottom of that letter it
6 contained a reference to Section 1.110 which said that if
7 you can't live with that lesser amount of power you have 30
8 days in which to object and file a 1.110 rejection, and then
9 you will be entitled to a hearing on the issue if you want
10 to go that route. Essentially, that's what it was.

11 JUDGE SIPPEL: Just a minute. I want to ask a
12 question.

13 Are we mixing apples with oranges here with
14 respect to a power waiver --

15 THE WITNESS: No.

16 JUDGE SIPPEL: -- versus -- no, we're not?

17 THE WITNESS: Wrangell radio waivers were applied
18 to power output limitations as well.

19 JUDGE SIPPEL: All right, and the Wrangell
20 exception or waiver that you believed you were properly
21 operating under goes well beyond the power though, doesn't
22 it? I mean, this is whether or not the station can operate.

23 THE WITNESS: Your Honor, Wrangell --

24 JUDGE SIPPEL: Am I right? Am I making an
25 accurate distinction? It is not just a power --

1 THE WITNESS: The Wrangell Radio Group exceptions
2 were applied to ownership, they were applied to signal
3 delivery, they were applied to power output, they were
4 applied to program origination, and they were applied to
5 cross-band translators.

6 JUDGE SIPPEL: Do we have something in the record
7 that shows that?

8 THE WITNESS: Well, footnote 59 shows as examples
9 three of those situations. It does not contain all five
10 that I just mentioned, but you can look at all the grants
11 and see what the action has been by the Commission.

12 JUDGE SIFFEL: All right. You may proceed.

13 MR. SOUTHMAYD: Thank you, Your Honor.

14 BY MR. SOUTHMAYD:

15 Q Were there other instances where you made changes
16 to translator applications over the telephone?

17 JUDGE SIPPEL: I mean, he gave one example about
18 that.

19 THE WITNESS: Yeah, I --

20 JUDGE SIPPEL: Let's move on to something else. I
21 mean, you can cover these areas in Exhibit 14.

22 MR. SHOOK: Your Honor, before we proceed with
23 that, I would point something out and perhaps this could be
24 remedied to some extent by Mr. Southmayd.

25 The pleading in Enforcement Bureau Exhibit 14

1 references a number of attachments, and try as I might I was
2 not able to locate any of the attachments that were
3 referenced, and I am hopeful that on the basis of what we
4 are -- what Mr. Southmayd is going into, that he has the
5 attachments that are actually referenced in this pleading
6 and will supply them and make them an exhibit or part of
7 this exhibit.

8 MR. SOUTHMAYD: I will do so. Your Honor, I
9 believe I have them and would be glad to make them
10 available.

11 JUDGE SIPPEL: Can you describe in a general way
12 what they relate to?

13 MR. SOUTHMAYD: Yes.

14 MR. SHOOK: Well, as a general proposition from
15 what I can see, they appear to be the various staff letters
16 that were issued relative to the translators that are being
17 discussed.

18 JUDGE SIPPEL: Well, they would be very -- yes, if
19 we're going to consider this evidence, we are going to
20 consider that too.

21 But you may proceed.

22 MR. SOUTHMAYD: Yes.

23 JUDGE SIPPEL: You may proceed. Yes, you're going
24 to bring that in or the Bureau is going to bring it in.
25 Okay, it will get taken care of.

1 MR. SOUTHMAYD: Thank you, Your Honor.

2 BY MR. SOUTHMAYD:

3 Q Mr. Becker, could you turn to EB Exhibit 7?

4 A I have it.

5 Q And at exhibit page 19.

6 A May 6th letter?

7 Q Correct.

8 A I have it.

9 Q And if you could review this and tell me, is this
10 an application for the Kenai translator?

11 A Yes.

12 Q And do you recall counsel for the FCC asking you
13 certain questions about this application?

14 A Yes.

15 Q Could you go to page 25 of the application, 25 of
16 the exhibit? It's entitled Exhibit A-6.

17 JUDGE SIPPEL: What page is that on?

18 MR. SOUTHMAYD: Let's see, it's hard -- 25 of the
19 exhibit It's the very last page, at least in mine.

20 THE WITNESS: It would be page 35 of the --

21 BY MR. SOUTHMAYD:

22 Q Is that 35?

23 A EB.

24 Q Exhibit A-6?

25 A Yes.

1 JUDGE SIPPEL: Yes, I have it. That would be page
2 35 of the --

3 THE WITNESS: Yes.

4 MR. SOUTHMAYD: Page 35.

5 JUDGE SIPPEL: -- internal numbering, yes.

6 MR. SOUTHMAYD: Thank you.

7 BY MR. SOUTHMAYD:

8 Q Did you prepare this exhibit?

9 A Yes.

10 Q What were you intending to convey in this exhibit
11 to the Commission?

12 A That we were both the proposed licensee of the
13 translator and the actual licensee of the station to be
14 rebroadcast over the translator, that we were an applicant
15 that was going to be both.

16 Q So is it fair to say you were asking for authority
17 to be both the translator owner and the station
18 rebroadcaster?

19 A Absolutely.

20 Q Would you turn to EB Exhibit 6 at page 17, exhibit
21 page 17?

22 A I have it.

23 Q Is this an application for your FM translator at
24 Soldotna, Alaska?

25 A Yes.

1 Q Could you refer to page 28 of the exhibit, which
2 is entitled Exhibit A-6?

3 A Yes.

4 Q Did you prepare this exhibit?

5 A Yes.

6 Q What did you intend to convey in this exhibit to
7 the Commission?

8 A Same thing in the previous one. I am both the
9 licensee of the station to be rebroadcast and the applicant.

10 Q And is it fair to say you were seeking
11 authorization to both own the translator and the station
12 that was being rebroadcast on?

13 A Yes.

14 Q Commission grand the Soldotna application on that
15 basis?

16 A Yes.

17 Q Did the Commission grant the Kenai application on
18 that basis?

19 A Yes.

20 Q Mr. Becker, can you refer to EB Exhibit 10? I'm
21 sorry. EB Exhibit 11.

22 A I have it.

23 Q Is that an application for transfer of translator
24 from Peninsula to Coastal?

25 A It is.

1 Q Coastal Broadcast Communications, Inc.?

2 A Yes.

3 Q Do you recall being questioned by counsel **for** the
4 Commission about this transaction?

5 A Yes.

6 Q Now, Mr. Becker, in connection with your
7 agreement, the agreement between Peninsula and Coastal, was
8 there any agreement that in consideration for the purchase
9 of the translators Coastal would continue to rebroadcast the
10 Peninsula signals?

11 A No.

12 Q Was that a condition to the deal?

13 A No, it's not contained in the agreement and it was
14 not a condition **of** the sale.

15 Q Is it true therefore that the day after Coastal
16 purchased these translators it could have taken your
17 stations off the translators and substitute another station?

18 A Yes.

19 Q Would that have been -- did it have that ability
20 out of the Commission's rules and regulations?

21 A Yes. The owner of the translator has discretion
22 to decide what station he wants to translate. So he can
23 decide who he wants to translate.

24 Q Does he need prior approval of the FCC to change
25 the input station?

1 A It's my understanding that the only thing that's
2 necessary is to inform the Commission by letter that you
3 have changed the input of the translator to a different
4 station or a different source. No prior approval required.

5 Q Now do I understand in response to previous
6 questions by Commission counsel that in Kenai/Soldotna you
7 operate two full power FM stations?

8 A Yes.

9 Q And that there are other FM stations in that
10 market?

11 A Yes.

12 Q What stations?

13 A There are -- there is a non-commercial public FM
14 on 91.9, KDLL.

15 Q Excuse me. I'm interested in commercial FM
16 stations.

17 A Oh, I'm sorry. Okay.

18 The Kenai/Soldotna market has not only locally
19 originated signals but the Commission has determined in one
20 of these proceedings that the market is also served by
21 signals which come from Anchorage. and are counted as
22 stations in the market by the Commission's criteria.

23 Q Okay. What local stations are there in Kenai and
24 Soldotna other than yours?

25 A Oh, I'm sorry.

1 Q If any.

2 A I'm sorry.

3 FM stations. There are **no** other commercial **FM**
4 stations in the local Kenai/Soldotna other than my own.

5 Q Does KSRM Inc only any FM stations in that area?

6 A Oh, yes.

7 Q What stations do they operate, Mr. Becker?

8 A I'm sorry. Excuse me.

9 Yes, KSRM has two commercial FMs, KKIS and KWHQ.
10 I apologize.

11 Q That's all right. It's been a long two days.

12 So theoretically if Mr. Buchanan had purchased our
13 Kenai/Soldotna translators, the next day he could have began
14 rebroadcasting these two stations?

15 A He can rebroadcast whoever he desires is my
16 understanding.

17 Q But these two stations are in the market.

18 A Yes.

19 Q He could pick up the stations and rebroadcast them
20 in lieu of your stations?

21 A I believe he would be free to do that.

22 Q And you had no agreement that he would be
23 precluded from doing that?

24 A No, there is no agreement.

25 Q For the record, Mr. Becker, KKIS, can you just

1 give me the operating power and the antenna height?

2 A It's my understanding it's a 10,000 watt FM. The
3 operating height is, to my recollection, about 187 feet
4 above average terrain.

5 Q And KWHQ?

6 A KWHQ is 3,000 watts, and operating height of its
7 terrain is -- if my memory is right -- it's about 230 feet
8 above average terrain.

9 Q Now your two FMs in the market are?

10 A KPEN-FM and KXBA (FM) .

11 Q And can you give me the power and antenna heights
12 for those, please?

13 A The power on KPEN is 25,000 watts. Antenna
14 height, 269 feet above average terrain. And KXBA is 50,000
15 watts, and if I remember right, it's the same height above
16 average terrain, I think it's within three feet -- I think
17 it's 271.

18 Q So your stations -- is it fair to say that your
19 two FM stations have far superior coverage in reach than the
20 KSRM stations in that market?

21 A Our lowest powered station is two and a half times
22 more powerful than their highest power station, and yes.
23 The answer is yes. I'm sorry.

24 Q Have you driven throughout that radio market --

25 A I have.

1 Q -- and listened to the station?

2 A Yes.

3 Q And does that confirm that your two stations have
4 far superior coverage --

5 A Yes.

6 Q -- to the KSRM station?

7 A Yes.

8 Q Mr. Becker, I think there was testimony in
9 response to questions by counsel to the Bureau that the
10 value for the sale or purchase of the translators by Coastal
11 is \$100,000.

12 A Yes.

13 Q Would the \$100,000 sale price cover your actual
14 out-of-pocket expenses in purchasing the equipment,
15 constructing the station and operating the stations for the
16 period that you owned them to that point?

17 A I would say it would be just about a wash.

18 Q So there was no profit in this transaction for
19 you?

20 A **No**, not -- not much, if any.

21 Q Is it fair to say you were just getting out them
22 what you had into them?

23 A Yes. I saw it as an opportunity to -- *it was*
24 *actually -- it was* a good opportunity because we were at the
25 time attempting to expand with **KXBA**, and I could use the

1 money to build that station, and the operational cost would
2 have gone to another party who would have continued -- my
3 assumption was he would have continued to run the station
4 and would have been a good deal. I saw it as a benefit to
5 me.

6 Q Mr. Becker, do you recall being asked by counsel
7 to the Commission about the SBA letter that Mr. Buchanan had
8 generated and that was put in evidence as an exhibit in this
9 proceeding?

10 A Yes.

11 Q And do you recall also a bank letter that was put
12 in as an exhibit that related to the SBA letter?

13 A Yes.

14 Q To the best of your knowledge, were you aware of
15 whether or not Mr. Buchanan had an alternative plan for
16 financing other than the SBA letter?

17 A Yes.

18 Q So the SBA letter was not his only plan for
19 financing his acquisition of the station?

20 A Yes.

21 MR. SHOOK: Objection; hearsay.

22 MR. SOUTHMAYD: I am asking what his --

23 BY MR. SOUTHMAYD:

24 Q Is that what your understanding was?

25 A Yes.

1 MR. SHOOK: It's still hearsay.

2 JUDGE SIPPEL: All right, I will sustain the
3 objection, but it's coming in a little bit late. I will
4 disregard the answer

5 BY MR. SOUTHMAYD:

6 Q Mr. Becker, did Mr. Buchanan ever tell you that
7 because his SBA letter was no longer valid he would not be
8 able to buy the translator?

9 MR. SHOOK: Objection.

10 JUDGE SIPPEL: Does this relate to something
11 that -- this sounds familiar.

12 MR. SOUTHMAYD: Counsel asked --

13 JUDGE SIPPEL: Have I had questioning on this
14 earlier?

15 MR. SOUTHMAYD: Yes. The letter is an exhibit.

16 JUDGE SIPPEL: Well, again this is an area where
17 I'm a little bit concerned about how you are leading this
18 witness. If he was shown the letter, and he testified to
19 it, it is direct testimony of an adverse witness. You can
20 show him the letter again and you can ask him, you know, --
21 well, I'm not so -- I kind of want to ask the question for
22 you. You can direct him to the subject area and you can ask
23 him a question, but what you were doing is suggesting his
24 answer, and that's what I want to avoid.

25 MR. SHOOK: Your Honor, the other problem and I

1 think the more pertinent problem that I have is that through
2 this questioning it appears that counsel is suggesting or
3 trying to get into the record that there was some financing
4 arrangement available for Mr. Buchanan other than what
5 appear in the documents that we --

6 JUDGE SIPPEL: Why don't we do this. I don't mean
7 to cut you off. Why don't we excuse the witness. We will
8 excuse the witness because maybe I am missing something
9 here. Excuse me, Mr. Becker. No, I'm just saying please
10 excuse us. We will send somebody out to get you.

11 (Witness temporarily excused from witness stand.)

12 JUDGE SIPPEL: Now, what are we trying to get at
13 here?

14 MR. SOUTHMAYD: Here is what I'm getting at, Your
15 Honor.

16 JUDGE SIPPEL: Well, let's find out. What were
17 you trying to get at when you -- you brought this testimony
18 out. I mean, you went into this with him about Mr. Buchanan
19 and the business end of this thing?

20 MR. SHOOK: Right. There have been questions
21 raised throughout about what was a deal breaker, at what
22 point did this deal collapse.

23 JUDGE SIPPEL: Yes?

24 MR. SHOOK: And one of the things that came to our
25 attention was that the financing plan that Coastal had for

1 going forward had died approximately at the time of the 1998
2 Commission order.

3 JUDGE SIPPEL: Okay, so there is -- there was a
4 bank letter to that effect?

5 MR. SHOOK: Correct.

6 JUDGE SIPPEL: And what Mr. Becker is trying to
7 establish is that the Commission broke the deal?

8 MR. SHOOK: Well, that's one -- one thing that he
9 is asserting is that the Commission broke the deal. I
10 understand where he is coming from on that. But one of the
11 things that we, or that we believe is going on is that the
12 deal had died for a different reason.

13 Now it appears that we are trying to get in
14 through Mr. Becker that there was an alternative financial
15 plan which somehow kept the deal alive, and that is
16 something that, you know, Mr. Becker is not competent to
17 testify about.

18 MR. SOUTHMAYD: If I could be heard on that.

19 JUDGE SIPPEL: Yes.

20 MR. SOUTHMAYD: Mr. Becker is a proposed seller of
21 these broadcast stations. This is his buyer. This was a
22 plan by the purchaser to purchase the stations, but not the
23 *only* plan. The truth is he had the personal financial
24 wherewithal to do the deal, and told Mr. Becker so.

25 So the fact that this letter expired is irrelevant

1 to the deal falling through. The deal was still on.

2 JUDGE SIPPEL: The problem is we don't have
3 Buchanan here. That's the problem.

4 MR. SOUTHMAYD: Well, is it fair to ask Mr. Becker
5 if he ever believed for any reason at any time that the deal
6 had fallen through because of **Mr.** Buchanan would be unable
7 to financially comply with the contract?

8 JUDGE SIPPEL: You can ask him the question -- you
9 can refer him to the bank letter which says that the deal
10 is, that they are not going to go forward with the deal.

11 MR. SOUTHMAYD: Okay.

12 JUDGE SIPPEL: And you can ask him if, to his
13 knowledge, Buchanan had any other sources to buy it. And
14 then from there you have got to be very careful how you ask
15 the questions, and we will see where he takes you. If it's
16 rank hearsay, you know -- well, I mean, I may not permit him
17 to answer or I'm not going to pay much attention to what he
18 is testifying to.

19 However, you do have a point. When people are
20 putting business deals together, they have a reason for
21 wanting to know, and they exchange a lot of information that
22 is know to what their liability is. In other words, I'm
23 assuming that a businessman like Mr. Becker knows the
24 business person that he's doing business with.

25 MR. SOUTHMAYD: Right.

1 JUDGE SIPPEL: It's not like me talking to my
2 neighbor.

3 Your problem with this is, is that you --

4 MR. SOUTHMAYD: It's hearsay to the extent the
5 evidence is -- are things told to Mr. Becker by Mr.
6 Buchanan.

7 JUDGE SIPPEL: That's right. That's what we are
8 worried about. But on the other hand, there is an element
9 of reliability here if he is able to put it together in a
10 clear and concise way. At least it's going to be what he --
11 it's giving his side of the story.

12 MR. SOUTHMAYD: Your Honor, I --

13 JUDGE SIPPEL: It's Mr. Becker's side of the
14 story.

15 MR. SOUTHMAYD: Your Honor, I think the record
16 would reflect counsel asked Mr. Becker if he learned of this
17 letter, and I think Mr. Becker said he did. **He** was told of
18 its existence by Mr. Buchanan, and Mr. Buchanan said he
19 wasn't going to reapply until the FCC finally approved this
20 transfer because it was a waste of time. I think we just
21 had that testimony this morning

22 JUDGE SIPPEL: We did.

23 MR. SOUTHMAYD: Well, if it's in the record that
24 Mr. Becker was told by Mr. Buchanan that this letter had
25 come, he obviously had knowledge of it, and he had knowledge